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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,299	12/16/2003	Isaac D. White	BEI-0039US	7666
49584	7590	07/16/2007		
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			EXAMINER LE, TAN	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,299	Applicant(s) WHITE ET AL.	
	Examiner Tan Le	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 11 and 13-24 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 17 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-8, 10-11, 13-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's reply filed 4/17/07 is acknowledged. Claims 1-8 and 10-11, 13-24 currently are pending. Claims 9 and 12 have been canceled. Claims 2, 4, 17 and 20-24 were withdrawn.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 5-8, 10-11, 13-16 and 18-19 are under 35 U.S.C. 103(a) as being unpatentable over AU Patent No. 200223231 to Nagle in view of US Patent No. 6,158,555 to Brown, Jr.

As to claims 1, 6-8, 10-11, 13-6 and 18-19, Nagle teaches a telescopic support pole for supporting a cable above the ground or floor at construction sites and in factories comprising a base (19); at least one or more segments (25) connected to the base; at least second segment (12, 14) connected to the first section; a cable receptacle (28) attached to an end portion of one of the segment; the cable receptacle having a generally U-shaped cross-section for receiving cable.

The Nagle device differs from claims 1 and 19 of the present invention is that it is not provided with a control system operative associated with the cable, wherein the control system is configured for receiving instructions communicated through at least one communication media, and a portable communication device configured to provide

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instructions to control system through at least one communication media, and at least one mechanical driving mechanism such as “gears, chains, belts, ball bearings, and/or other like components” (Applicant’s specification, page 8, [0024]) operatively coupled to respond the control system to enable the telescoping action.

Brown Jr. teaches the concept of such, Brown, Jr. teaches the control system generally in a control panel 16 and control the extension and retraction of the mast 4 through drive mechanism (not shown)) –it would have been obvious to one of ordinary skill in the art at the time the invention to provide a control system operative associated with the cable wherein the control system is configured for receiving instructions communicated through at least one communication media, and a portable communication device configured to provide instructions to control system through at least one communication media and at least one mechanical driving mechanism operatively coupled to respond the control system to enable the telescoping action on the Nagle telescopic support pole as taught by Brown Jr. in order to allow the user to remotely control the telescopic action through wireless medium to a computer system which instructs the driving mechanism to extend the telescoping segments so that the height of the pole can be automatically adjusted depending the conditions of use.

Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an automatic control means which in this case a control system and a portable communication device operatively associated with the telescopic segments of the pole or mass and the mechanical driving mechanism operatively coupled to respond to the control system to enable the telescopic action,

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since it has been held that broadly providing a mechanical or automatic means to replace manual activity, which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

As to claims 3 and 5, Nagle in view of Brown Jr. does not appear to specifically teach the base including at least one attachment device for attachment of the base to an attachment surface and removably attached to the surface as recited in claims 3 and 5. It's noted however, the fact that Nagle's device although just sits on the floor but Nagle's device was holding down by gravity force and thus one could argue that Nagle's device was attached on the floor by the force of gravity. This would also then be removably attached thus meeting claims 3 & 5.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3, 5-8, 10-11, 13-16 and 18-19 have been considered but they are not persuasive.

Applicant argues that Nagle cannot teach or suggest "a portable communication device configured to provide instruction to the control system through at least one communication media" as recited in claim 1 (or 19)". This argument is not persuasive. As noted in the rejection above, to provide a portable communication device to give instruction to the control system to make the system control remotely or automatically would have been obvious to one of skill in the art since it has been held that broadly providing mechanical or automatic means to replace manual activity, which has accomplished the same result involves only routine skill in the art. In re Vennner, 120

USPQ 192. In addition, it would also have been obvious to one having ordinary skill in the art at the time the invention was made to provide a portable communication device to provide instructions to the control system since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routinely skill in the art. In re Linderg, 93 USPQ 23 (CCPA 1952).

With respect to Applicant's argument concerning that the control panel 16 of Brown, Jr. that is "generally mounted to the exterior of the vehicle 2, and affords control of the extension and retraction of mast 4. Therefore Brown, Jr. also cannot teach or suggest, "a portable communication device configured to provide instructions to the control system through at least one communication media" (page 11). This argument is also not persuasive. Applicant should note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Further, there is no requirement for a secondary reference to meet every limitation of the claim before it can be utilized. Brown Jr, clearly teaches that the use of control system operatively associated with the cable drop support system through which the control system (which controls by panel) receives instructions communicated through at least one communication media, which is old and well-known per se in the lifting and lowering system. It has long been established by case law that it is well-within the level skill in the art to utilize known features of the art for the purpose for which they are known. Replacement of the fixed control panel for another portable communication device is well-within the purview of one of ordinary skill in the art. In view of the above reasons, the examiner respectfully submits that the cited references

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to Naggle and Brown Jr., in combination, would have fairly suggest to one of ordinary skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tan le
July 2, 2007.



Carl D. Friedman
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